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**IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CENTER FOR BIOLOGICAL DIVERSITY )  
 and TURTLE ISLAND RESTORATION )  
 NETWORK, )  
 )  
 Plaintiffs, )  
 v. )  
 )  
 KEN SALAZAR and UNITED STATES )  
 FISH & WILDLIFE SERVICE, )  
 )  
 Defendants. )

No. C 10-992 SC

**STIPULATION AND ~~[PROPOSED]~~  
 ORDER MODIFYING STIPULATED  
 SETTLEMENT AGREEMENT AND  
 ORDER OF DISMISSAL**

Stipulation and [Proposed] Order  
 Modifying Stipulated Settlement  
 Agreement and Order of Dismissal

Pursuant to Civil L.R. 7-12, this Stipulated Settlement Agreement is entered into by and between Plaintiffs Center for Biological Diversity and Turtle Island Restoration Network, and Federal Defendants Ken Salazar, Secretary of the United States Department of the Interior, and the United States Fish and Wildlife Service (collectively “FWS” or “Service”):

WHEREAS, on December 18, 2008, the Service made 12-month findings, pursuant to 16 U.S.C. § 1533(b)(3)(B)(ii), that listing seven penguin species, or subpopulations thereof (collectively the “seven penguin species”) was warranted, and issued a proposed listing regulation for these species pursuant to 16 U.S.C. § 1533(b)(5), 73 Fed. Reg. 77,264 (Dec. 18, 2008); 73 Fed. Reg. 77,303 (Dec. 18, 2008); 73 Fed. Reg. 77,332 (Dec. 18, 2008);

WHEREAS, on March 9, 2010, Plaintiffs filed a Complaint for declaratory and injunctive relief, challenging the Service’s failure, as to the seven penguin species, to issue a final listing determination within one year as required by 16 U.S.C. § 1533(b)(6)(A)(i);

WHEREAS, on June 3, 2010, the Court approved the parties’ Stipulated Settlement Agreement resolving this action, and entered an Order dismissing this case, Doc. No. 8;

WHEREAS, it has come to the parties’ attention that paragraph 3 of the Stipulated Settlement Agreement, as submitted to the Court, misidentifies the species at issue;

WHEREAS, Paragraph 5 of the Stipulated Settlement Agreement and Order provides that this Court may modify the terms of the Order upon good cause shown;

WHEREAS, Plaintiffs and Defendants agree that correction of the Stipulated Settlement Agreement and Order is advisable;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

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Stipulation and [Proposed] Order  
Modifying Stipulated Settlement  
Agreement and Order of Dismissal

1 1. Paragraph 3 of the Stipulated Settlement Agreement and Order shall be modified to read  
2 as follows:

3 3. On or before January 28, 2011, the Service shall submit to the *Federal Register* a final  
4 listing determination, pursuant to 16 U.S.C. § 1533(b)(6)(A)(i), as to its proposal to list  
5 the Campbell Plateau portion of the range of the New Zealand/Australia distinct  
6 population segment of the southern rockhopper penguin, *Eudyptes chrysocome*.

7 2. The remaining provisions of the Stipulated Settlement Agreement and Order shall remain  
8 in effect and are unchanged by this modification.

9  
10 Dated: June 14, 2010

Respectfully submitted,

11 IGNACIA S. MORENO, Asst. Attorney General  
12 JEAN E. WILLIAMS, Section Chief

13  
14 /s/ Lawson E. Fite  
15 LAWSON E. FITE, Trial Attorney  
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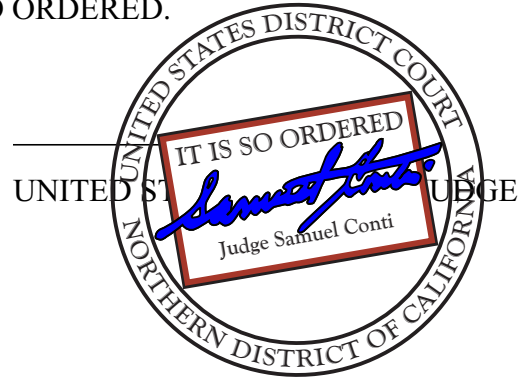
26 Attorneys for Defendants

27  
28 /s/ Catherine W. Kilduff (by LEF, as authorized  
6/14/10)  
Catherine W. Kilduff (CA Bar No. 256331)  
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Attorneys for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.



6/15/10

Stipulation and [Proposed] Order  
Modifying Stipulated Settlement  
Agreement and Order of Dismissal

CENTER FOR BIOLOGICAL  
DIVERSITY, et al.,

Plaintiffs,

v.

KEN SALAZAR, et al.,

Defendants.

No. C 10-992 SC

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2010, I electronically filed the foregoing STIPULATION AND [PROPOSED] ORDER MODIFYING STIPULATED SETTLEMENT AGREEMENT AND ORDER OF DISMISSAL with the Clerk of the Court via the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Lawson E. Fite

LAWSON E. FITE